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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,887	03/09/2005	Roland Hosp	04-487	6756
34704 7590 05/12/2008 BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510				
EXAMINER				
QUINN, COLLEEN M				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
05/12/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/506,887

**Applicant(s)**

HOSP, ROLAND

**Examiner**

COLLEEN M. QUINN

**Art Unit**

3634

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-50 is/are pending in the application.
- 4a) Of the above claim(s) 27,28,31,40-45 and 47-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-26,29,30,32-39 and 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Species 2, figures 5-7 in the reply filed on April 14<sup>th</sup>, 2008 is acknowledged. The applicant suggested that claims 24-36 are generic and that additionally claims 37-39 read on the elected species. Upon examination of the claims the examiner found the applicant's suggestion to be incorrect. Currently no claims are generic since independent claim 24 includes features found only in some species, but not others (i.e. the additional supporting member is not present in all species). Upon review of the claims the examiner determined that currently claims 24-26, 29, 30, 32-39 and 46 read on elected Species 2. Claims such as 27, 28 and 31 include a coil spring and spaced apart guide mean features not present in Species 2; and claims 40-45 and 47-50 are directed to devices other than the device of elected Species 2.

Therefore, claims 27, 28, 31, 40-45 and 47-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April, 14<sup>th</sup>, 2008.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-26, 29, 30, 32-39 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what the applicant means by the bow being joined to the device "*under an angle*" (claim 24). Additionally it is unclear throughout the claims (claims 24, 25, 26) what "*perpendicular*" the applicant is referencing when claiming the bow and/or guide means is at an angle "*with respect to the perpendicular*" or on a plane which includes an angle with the perpendicular (claims 34-36 ) without clarifying where or to what element the perpendicular reference is.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood in view of the 112 issues above, Claims 24-26, 29, 30, 32-35, 37 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Hokanson (US 2,687,932) as best understood in light of the above rejection. Hokanson discloses a table/device for gradient compensation (figure 1) comprising an arc-shaped bow (26,38) slidably arranged in arc-shaped tubes (20, 22, 24) guide means, the bow protruding at

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least on one end from the guide means and said at least one bow end constituting a standing leg for the device (figure 1), at least one additional supporting member, wherein the additional supporting member is an arc-shaped bow ( 2<sup>nd</sup> arc-shaped bow 26,38) slidably received in a second guide means (figure 2), said guide means being a rigid guide means, the bow being joined to the device at an angle (figure 3), and the bow in use, being arranged at an angle with respect to the perpendicular such that the bow is frictionally fixed in the guide means under the influence of gravity (figure 3) wherein the angle with respect to the perpendicular is between 30° and 60°, and more specifically approximately 45 (figure 3); and wherein the outer diameter of the bow corresponds substantially to the inner diameter of the guide means (figures 3-5); the device further comprising a supporting surface (10), wherein the supporting surface is rigidly joined to the guide means and/or the at least one additional supporting member (figure 2), wherein the guide means and the bow extend in a plane and the plane is at an angle with respect to a perpendicular to the supporting surface which is preferably between 30° and 60° and approximately 45 (figure 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hokanson as applied to claims 24-26, 29, 30, 32-35, 37 and 46 above, and further in view of Cole (US 6,644,216). Hokanson fails to disclose a strut and the angle between the two sets of guide means to be between 70° and 110°.

However, Cole teaches a gradient compensating device (2) comprising a surface (4) supported by angled support members/legs (6) and struts (10) wherein the support members are capable of being arranged at any angle (abstract) to accommodate for a level surface on uneven ground, teaching that the angle between such supporting members is merely user design choice and that different angles may be required in different environments (different uneven ground areas).

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of Hokanson with a strut for additional support and support members/legs angled at whatever angle the user desires or requires, as taught by Cole, for accommodating to particular device applications and/or environments.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/  
Supervisory Patent Examiner, Art Unit 3634

/C. M. Q./  
Examiner, Art Unit 3634